

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 5975 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKAR

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the Civil Judge? : NO

TAKHUBA WD/O. GAGUBHA BALUBHA

Versus

STATE OF GUJARAT

Appearance:

MR MC SHAH for Petitioners
M/S PATEL ADVOCATES for Respondent No. 1, 2

CORAM : MR.JUSTICE C.K.THAKKAR

Date of decision: 09/03/2000

ORAL JUDGEMENT

This petition is filed against an order passed by the Dy. Collector in Ceiling Revision Case No.27 of 1986 on 6th October, 1986 and confirmed in Revision Application NO.TEN.B.A.235/87 by the Gujarat Revenue Tribunal on 10th February, 1989.

2. The case of the petitioners was that one Balubha Rupsangji was father-in-law of the petitioners. Petitioner No.1 was widow of Gagubha, son of Balubha. Similarly, petitioner NO.2 was widow of Ajubha, another son of Balubha. Balubha died leaving behind him his heirs and also agricultural land situated in the Sim of Village Shiyal, Tal. Dholka, Dist. Ahmedabad. About 20 pieces of land admeasuring 83 Acres and 27 Gunthas was left by the deceased. Proceedings were initiated in accordance with the provisions of the Gujarat Agricultural Land Ceiling Act, 1960 (hereinafter referred to as 'the Act') and after considering the facts and circumstances as also evidence on record, the Mamlatdar and A.L.T., Dholka, passed an order in Ceiling Case NO.163 of 1976 on November 29, 1985, holding that two Khatedars namely Takhuba and Chandaba were entitled to two units and as they were entitled to 50 Acres and 25 Gunthas each, and since the total land was 83 Acres and 27 Gunthas, it did not exceed the permissible limit under the Act. The proceedings were, therefore, dropped.

3. It appears that the said order was taken in suo-motu revision by the Dy. Collector who held that during the period between January 24, 1971 and April 1, 1976, the entire land was in the name of Takhuba and though it was case of petitioners that partition had already taken place, as no entry was effected in the record of rights, the petitioners were entitled to only one unit. Considering one unit and deducting 50.25 Acres, the remaining land was declared as surplus and accordingly an order was passed to that effect.

4. Being aggrieved by the order passed by the Dy. Collector, the petitioners preferred Revision Application before the Gujarat Revenue Tribunal. Before the Tribunal, it was contended that since the petitioners were illiterate, they were not aware of legal implications of getting entries made in the record of rights by entering their names. The fact, however, remained, according to them, that the property was already partitioned and hence they were entitled to two units. It was further contended that since the petitioner No.2 was entitled to one unit as her share, a Civil Suit was filed, which was decreed and both the petitioners were entitled to one unit, each. Since the order passed by the Dy. Collector was not in consonance with law, revision application was deserved to be allowed.

5. The Revenue Tribunal, however, relied upon a

decision of Hon'ble Supreme Court in State of Maharashtra Vs. Narayan Rao, AIR 1985 SC 715, in which it was held that in absence of express evidence of separate residence and partition of property, a presumption would be that joint family remained joint even after death of Karta of the family. In absence of evidence to show that the members of joint family were separated, a family consisting of Karta, son, wife and mother, was treated as joint family by giving only one unit under the Agricultural Lands Ceiling Act. Holding so, the Honourable Supreme Court set aside the decision of the Bombay High Court as it had committed an error of law in giving separate units to other members of the family.

4. Mr. M.C. Shah, learned counsel for the petitioners submitted that in the instant case, the ratio laid down by the Supreme Court in Narayan Rao does not apply. According to the counsel, the Supreme Court has held that the family would be treated to be joint and members would be staying together, in absence of evidence to that effect. He however, stated that so far as the Dy. Collector is concerned, no finding is recorded by him one way or the other. He has merely proceeded on the basis that the land remained in the name of petitioner No.1 alone and that was the only consideration weighed with him in deciding the matter against the petitioners. The Revenue Tribunal has merely relied upon the abovereferred decision of the Supreme Court and presumption that the family would be deemed to be joint even after the death of Karta of family. But in the instant case, there is evidence to the contrary. For that, my attention was invited by Mr. Shah to the evidence of Takhuba-petitioner No.1 before the Mamlatdar and A.L.T. on November 18, 1980. In her deposition, she has stated that she was holding the land in respect of which proceedings were initiated under the Act. She also admitted that the entire land stood in her name, but she had specifically stated that petitioner No.2 had share in the said property and petitioner Nos. 1 and 2 both were residing separately. Since the said fact has not been considered by the Authority and no specific finding has been recorded, the petition deserves to be allowed directing the Dy. Collector to consider the evidence and to record a finding on the basis of which final decision can be reached.

5. For the foregoing reasons, the petition deserves to be partly allowed. Rule is made absolute by remanding the matter to the Dy. Collector for passing appropriate order in accordance with law. Interim Relief granted earlier shall continue till the disposal of the

proceedings before the Dy. Collector. In the facts and
circumstances of the case, no order as to costs.

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